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APPLICATION NO. FILING DATE		FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/600,839		06/23/2003	Louis-Philippe Lefebvre	15037-US-CIP	6457
23553	7590	07/21/2004		EXAMINER	
	& CLERK	.	JENKINS, DANIEL J		
P.O. BOX STATION			ART UNIT	PAPER NUMBER	
OTTAWA	,	2 587	1742		
CANADA				DATE MAILED: 07/21/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

1)⊠ Responsive to communication(s) filed on <i>07 April 2004</i> . 2a)□ This action is FINAL. 2b)⊠ This action is non-final. 3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4)☑ Claim(s) <i>1-49</i> is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 6)☑ Claim(s) <i>1-46</i> is/are rejected. 7)□ Claim(s) is/are allowed. 6)☑ Claim(s) is/are allowed. 6)☑ Claim(s) is/are abjected to. 8)□ Claim(s) are subject to restriction and/or election requirement. Application Papers 9)□ The specification is objected to by the Examiner. 10)□ The drawing(s) filed on is/are: a)□ accepted or b)□ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11)□ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a)□ All b)□ Some * c)□ None of: 1.□ Certified copies of the priority documents have been received in Application No 3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. Attachment(s) b) □ Anotice of Prafiserson's Patent Drawing Review (PTO-349) b) □ Internation Disclosure Statement(s) (PTO-149 or PTO/SB/08) Faper Not(s)/Mail Date 4//294.		Application	on No.	Applicant(s)				
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This action is FINAL. 2b) This action is non-final.	HE MAILING DATE OF THIS COMMUN Extensions of time may be available under the provisior after SIX (6) MONTHS from the mailing date of this com If the period for reply specified above is less than thirty If NO period for reply is specified above, the maximum or Failure to reply within the set or extended period for reply any reply received by the Office later than three months.	NICATION. ns of 37 CFR 1.136(a). In no eve nmunication. (30) days, a reply within the statu statutory period will apply and wil ly will. by statute. cause the appl	nt, however, may a reply be tin tory minimum of thirty (30) day I expire SIX (6) MONTHS from cation to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication.				
2a)	Status							
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Closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4)								
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Art Unit: 1742

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain <u>a</u> patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

- 2. Claims 34-36 and 38-46 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 30-40 of prior U.S. Patent No. 6,660,224. This is a double patenting rejection.
- 3. Claims 34 and 35 rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28 and 29 of prior U.S. Patent No. 6,660,224. This is a double patenting rejection.
- 4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 5. Claim 37 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30-40 of U.S. Patent No. 6,660,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because the addition of additional binder would be obvious to one of ordinary skill in order to modify the ability of the dry powder to flow.
- 6. Claims 1-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,660,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because the total removal of all traces of binder would be desired by one of ordinary skill in the art in the reduction of impurities in the formed foam.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Jenkins whose telephone number is 571-272-1242. The examiner can normally be reached on M-TH6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1242. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel J. Jenkins Primary Examiner Art Unit 1742

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